

Constance Van Kley
Rylee Sommers-Flanagan
Upper Seven Law
P.O. Box 31
Helena, MT 59624
(406) 306-0330
constance@uppersevenlaw.com
rylee@uppersevenlaw.com

Niki Zupanic
Zupanic Law PLLC
P.O. Box 1982
Helena, MT 59624
(406) 461-5178
niki@zupaniclaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN;
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; THE WESTERN MONTANA
COMMUNITY CENTER; MONTANA
PRIDE; THE GREAT FALLS LGBTQ+
COMMUNITY CENTER; THE ROXY
THEATER; and THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and THE CITY OF
HELENA,

Defendants.

Cause No.
CV-23-50-BU-BMM

**Plaintiffs' Motion for
Summary Judgment on
Counts IV & V**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs move for summary judgment on Counts IV and V of the First Amended Complaint. Plaintiffs bring their claims under 42 U.S.C. § 1983. (Doc. 3, ¶ 6.) This Motion seeks dispositive relief as to the constitutionality of Montana House Bill 359 (2023) (“HB 359”) and is brought exclusively against Defendants Austin Knudsen and Elsie Arntzen, the only Defendants named in Counts IV and V.

On its face, HB 359 violates the First Amendment, which is incorporated against the State of Montana through the Fourteenth Amendment. HB 359 targets speech, including drag and certain speech with non-obscene sexual content, on the basis of the speech’s content and viewpoint. It is subject to and fails strict scrutiny. HB 359 furthers no interest but animus, and it is both overbroad and underinclusive. Plaintiffs’ Motion for Summary Judgment on Count IV should be granted.

HB 359 also violates the Fifth Amendment, likewise incorporated against the State through the Fourteenth Amendment. HB 359 fails to put citizens and enforcers on fair notice of its restrictions on speech, which carry criminal penalties. It creates the risk of discriminatory

enforcement and causes self-censorship. Because HB 359 is void for vagueness, Plaintiffs' Motion for Summary Judgment on Count V should be granted.

Plaintiffs contacted opposing counsel in preparation for filing. Defendants Knudsen and Arntzen oppose this motion. Defendant J.P. Gallagher takes no position on it.

Respectfully submitted this 28th day of November, 2023.

/s/ Constance Van Kley
Constance Van Kley
Rylee Sommers-Flanagan
Upper Seven Law

CERTIFICATE OF SERVICE

I hereby certify that this document was filed in CM/ECF on November 28, 2023, and served upon all registered users.

/s/ Constance Van Kley
Attorney for Plaintiffs